Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re: Delete, Delete, Delete	)	GN Docket No. 25-133

COMMENTS OF THE

COMPETITIVE ENTERPRISE INSTITUTE

COMPETITIVE ENTERPRISE INSTITUTE
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The Competitive Enterprise Institute ("CEI") hereby comments in the above captioned proceeding released on March 12, 2025. CEI applauds the Federal Communications Commission ("FCC" or "Commission") for initiating this proceeding and thinks that eliminating regulatory burdens will serve the public interest by fostering an innovative communications industry that benefits consumers. Specifically, the Commission should repeal or "delete" E-Rate funding for Wi-Fi hotspots at locations outside of classrooms and libraries, the "all-in" cable and direct broadcast satellite ("DBS") regulations, and the broadband label regulations that exceed the statutory mandate.

I. E-RATE SUPPORT FOR PUBLIC HOTSPOTS

Last year, the Commission expanded E-Rate funding to cover Wi-Fi hotspots in locations outside of classrooms and libraries with its *Addressing the Homework Gap through the E-Rate*

Program order.[1] The order followed the expiration of the Wi-Fi hotspot funding that Congress provided in the American Rescue Plan Act of 2021 during the COVID-19 emergency.[2]

The *2024 E-Rate Order*'s use of E-Rate funding for Wi-Fi hotspots outside of classrooms and libraries is inconsistent with the Telecommunications Act and increases E-Rate expenditures when funding is already under stress. The Commission should therefore reverse that decision and repeal the amendments and additions to the Part 54 rules that were established by the *2024 E-Rate Order*.[3]

Section 254(h)(2)(A) of the Telecommunications Act limits the FCC's E-Rate authority to enhancing classroom and library access to telecommunications and information services. The authority does not extend to "off-premises" locations outside of classrooms and libraries, even when people use those locations for educational purposes.[4] The statute states:

> (2) Advanced Services
>
> The Commission shall establish competitively neutral rules –
>
> (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries . . . .[5]

As is clear from the text, E-Rate is to be used for classrooms and libraries. Using E-Rate to fund Wi-Fi hotspots located outside of classrooms and libraries is beyond the scope of the statute and

[1] Addressing the Homework Gap through the E-Rate Program, 89 Fed. Reg. 67,303 (Aug. 20, 2024) [hereinafter *2024 E-Rate Order*].
[2] American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 7402 (2021) (enacted) [hereinafter American Rescue Plan Act].
[3] 54 C.F.R. §§ 500, 502, 504, 506, 507, 513, 516, 520.
[4] 47 U.S.C. § 254(h)(2)(A).
[5] *Id.*

therefore not authorized by Congress. Indeed, any other read of the statute would place no limits on how the Commission could use E-Rate funding at locations beyond classrooms and libraries.

Further, this expansion of the use of E-Rate funding comes at a time when the universal service factor is 36.6 percent.[6] Unlike the dedicated 2021 Wi-Fi hotspot funding authorized by Congress—funding that Congress specifically determined would end when the COVID-19 emergency ended—this order uses existing E- Rate funding and does so without limits on the amount of ratepayer funds to be expended.[7] As then Commissioner and now Chair Carr recognized in his dissenting statement, the *2024 E-Rate Order* has:

> no limit on the amount of ratepayer dollars that can be expended in aggregate over the course of years, no limit on the locations at which the hotspots can be used, no sunset date on the program, and no protection against this program increasing customers' monthly bills.[8]

Expanding E-Rate funding on an essentially unlimited basis, especially to locations outside the statutory scope, is an ill-advised approach when universal service is placing such a high burden on telecommunications services consumers.

The Commission should therefore reverse the *2024 E-Rate Order* and "delete" the corresponding amendments and additions to the Part 54 rules.

II. ALL-IN PRICING FOR CABLE AND SATELLITE TELEVISION SERVICES

[6] *See Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support*, FED. COMM. COMMISSION, https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support (last visited Apr. 10, 2025).
[7] American Rescue Plan Act.
[8] *2024 E-Rate Order* (dissenting Statement of Commissioner Brendan Carr).

Last year the Commission adopted the *All-In Pricing for Cable and Satellite Television Services* order, a prescriptive attempt at transparency that the Commission stated was needed because the "public interest requires that cable operators and DBS providers represent their subscription charges transparently, accurately, and clearly." [9]

The *All-In Pricing Order* overreached, establishing detailed regulations specifying the delineation of aggregate pricing and other granular information for both billing and promotional materials. The billing regulations include providing aggregate pricing as a single line item, specifics regarding introductory or limited pricing that require the provider to state when the discounted price ends "by disclosing either the length of time that a discounted price will be charged or the date on which a time period will end that will result in a price change[,]" and stating the "post-promotion rate 60 and 30 days before the end of any introductory period."[10]

Promotional material regulations include aggregate pricing, "where and how" customers may obtain their subscriber-specific "all-in" price if the aggregate price fluctuates by service location, and if the aggregate price is limited in time, the provider must state the "post-promotion rate, as calculated at that time, and the duration each rate will be charged."[11]

These regulations are cumbersome and unnecessary in light of the pricing information that is already provided to consumers by cable and DBS providers and that is required under existing law. Indeed, providing accurate information to consumers is a marketplace necessity as

[9] All-In Pricing for Cable and Satellite Television Services, Report and Order, 89 Fed. Reg. 28,660, 28,663 para. 12 (Apr. 19, 2024) [hereinafter *All-In Pricing Order*].
[10] 47 C.F.R. § 76.310(a).
[11] 47 C.F.R. § 76.310(b).

consumers have a range of choices for video service providers. As NCTA – The Internet and Television Association explained in its comments in the proceeding:

> our members disclose in promotional materials that the price for video service may include additional fees, typically dependent on what customers purchase and where they live. In the course of a prospective customer's consideration of which service package to buy (the "buy-flow") and on customers' bills, our members clearly disclose the specific amounts of the fees that will apply and the total amount customers will pay for service, thereby ensuring that customers are not "surprised by unexpected fees."[12]

The "all-in" rules therefore add little if anything material to the consumer decision-making and purchasing experience.

In addition, these concerns had already been addressed by Congress in the Television Viewer Protection Act of 2019, which requires transparent pricing at the point of sale and in billing.[13] Congress therefore rendered the "all-in" regulations unnecessary because it had already ensured that consumers were receiving the necessary transparency.

The "all-in" regulations set forth in 47 C.F.R. § 76.310(a) and (b) should be "deleted." Marketplace demands for relevant pricing information and Congressional action on transparency provide consumers the information they need. There is no need for additional compliance obligations on cable and DBS providers.

III. BROADBAND LABEL REGULATIONS

In 2022, the Commission adopted the *Empowering Broadband Consumers Through Transparency* order, which requires Internet service providers ("ISPs") to provide a variety of

[12] NCTA – The Internet & Television Association, Comments on *All-In Pricing Order*, at 2 & 3 (July 31, 2023), https://www.fcc.gov/ecfs/document/10731021578495/1.
[13] 47 U.S.C. § 562.

disclosures regarding their mass market retail broadband internet access service ("BIAS") offerings.[14] The obligations apply to ISP offerings to consumers and businesses that are not "enterprise" or "large" business customers, and to ISP offerings to participants in the E-Rate and Rural Health Care ("RHC") programs.[15]

The order and supporting regulations followed the Biden administration's Infrastructure Investment and Jobs Act, which in part required ISPs to display in the form of labels information regarding their BIAS service plans.[16] The Infrastructure Act instructed the Commission to "promulgate regulations to require the display of broadband labels" and that the label "shall also include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period."[17]

The *Broadband Label Order* and resulting regulations, however, go beyond that statute and impose needless burdens on ISPs that provide little to no value to consumers. The following regulations should be repealed by the Commission:

- § 8.2(a)(2) – This section requires alternate sales channel point of sale disclosure and is impractical for ISPs to comply with because "alternate" is defined as "a provider's website and any alternate sales channel," including on phone calls. The Commission believed that ISPs could comply with steps such as providing hard copies, QR codes and "orally providing information from the label to the consumer over the phone."[18] The

[14] Empowering Broadband Consumers Through Transparency, 87 Fed. Reg. 76,959 (Dec. 16, 2022) [hereinafter *Broadband Label Order*].
[15] *Id.* paras. 17-18.
[16] The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60504(a), 135 Stat. 429, 1244 (2021) [hereinafter Infrastructure Act]; *see also* 47 C.F.R. pt. 8.
[17] Infrastructure Act § 60504(a), (b)(1).
[18] *Broadband Label Order* para. 95.

Commission therefore believed that a consumer would like to have the label read to her or him over the phone, a dubious proposition. Further, the regulation requires that for alternate sales channels, providers must document each instance when it directs a consumer to a label and retain such documentation for two years. This is a heavy regulatory burden that exceeds any potential benefit to consumers and ideally should be dispensed with, but at a minimum, a shorter retention period of one year or less would be more reasonable.

- § 8.2(a)(3) – This section requires that the label must be displayed on the ISPs' website in machine readable format. This requirement appears primarily designed to help third-party comparison-shopping sites collect website data so they can package it to consumers shopping for BIAS. Comparison-shopping sites may have value, but ISPs should not be mandated to display their information in a manner that is convenient for comparison-shopping sites. The ostensible purpose of the label is to inform consumers making their BIAS purchasing decisions rather than to facilitate third party data collection.
- § 8.2(a)(4) – This section requires that the label must be provided "in English and any other languages in which the broadband internet access service provider markets its services . . . ." While this may be a shrewd voluntary practice in response to the needs of particular communities, it should not be an obligation. If an ISP fails to provide the label in a language in which it markets and that failure is important to a community, the ISP will hear any objections through the marketplace as those language community members will likely take their business elsewhere. Market incentive is the best regulation and there is no need for a language mandate.

- § 8.2(a)(5) – This section requires ISPs to archive all labels "for a period of no less than two years from the time the service plan reflected in the label is no longer available for purchase by a new subscriber and the provider has removed the label from its website or alternate sales channels." Retaining old labels has little value and need not be a requirement. If the Commission maintains a retention requirement, two years is a lengthy period in which it is unlikely that consumers will seek information on prior service plans. A much shorter retention period such as one year or less would be more practical.

Additionally, the Commission applied the broadband label obligation to ISPs serving all business customers who are not "enterprise" or "large" businesses because they are considered "mass market" customers.[19] This is condescending regulatory overreach. All business customers should be excluded from any label obligation because businesses of all sizes possess the sophistication to understand terms such as rates, charges and speed levels. Small and medium-sized businesses frequently successfully enter into contracts, leases and other transactions of greater cost and complexity than their broadband service without needing the handholding of government-mandated labels.

Similarly, ISPs serving the E-Rate and RHC programs should be excluded as well.[20] E-Rate and RHC customers are schools, libraries and health care providers who routinely enter into transactions of larger value and complexity without the aid of labels. Like businesses, they can make informed decisions without the imposed labeling burden on ISPs.

[19] *Id.* para. 17.
[20] *Id.* para. 18.

"Deleting" these regulations and excluding ISPs serving businesses and the E-Rate and RHC programs will serve the public interest by better aligning ISP compliance burdens with the perceived consumer benefits and marketplace realities.

VI. CONCLUSION

Eliminating as much of the regulatory burden as possible is the surest and most efficient way of benefiting consumers, protecting taxpayers, and unleashing the maximum amount of innovation and prosperity in the communications industry.

Respectfully submitted,

/s/

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